IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.
:::
O R D E R

M/s. Ramesh Kumar & Brothers, Sri Ganganagar
vs.
The Commissioner of Income Tax, Jodhpur & Anr.

S.B. CIVIL WRIT PETIION NO.694/196 UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 17th August, 2007
REPORTABLE

PRESENT
HON'BLE MR. JUSTICE PRAKASH TATIA

Mr.LR Mehta]
Mr.Avinash Acharaya], for the petitioner.
Mr.KK Bissa, for the respondents.

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BY THE COURT:

Heard learned counsel for the parties.

The only question urged before this Court is that whether the prayer for waiver of the interest under Section 215 (4) of the Income Tax Act, 1961 could have been rejected by the assessing authority only on the ground that the Commissioner of Income Tax already granted relief of reducing the interest by 50% under Section 273A.

According to learned counsel for the petitioner the interest can be levied under Section 215 of the Income Tax Act, 1961 and power has been given to the assessing

authority under sub-sec.(4) to reduce or even waive the interest payable by the assessee. Further power is given to the Commissioner of Income Tax under Section 273A to reduce or waive the interest but for that purpose one must be entitled to claim reduction of interest or waivement of interest by fulfilling certain condition. The scope of Section 273A is quite different and the Commissioner Income Tax can reduce or waive the interest levied by the assessing authority under Section 215 and also Income Tax Commissioner can reduce or waive the interest even when the Assessing Authority has refused the relief to assessee under sub-section (4) of Section 215 of the Income Tax Act, 1961. Inspite of power of Commissioner of Income Tax under Section 273A, the Commissioner's decision under Section 273A is neither binding upon the assessing authority nor relevant when assessing authority is required to take decision under sub-section (4) of Section 215 of the Income Tax Act, 1961.

Learned counsel for the petitioner relied upon judgment of Kerala High Court delivered in Associated Traders VS. Income Tax Officer & Ors reported in (1989) 180 ITR wherein though the controversy was different inasmuch as the Income Tax Commissioner refused to exercise jurisdiction under Section 273A of the Act of 1961 and the appellate authority

from order passed by the regular assessment refused to exercise jurisdiction under Section 215(4) of the Act of 1961 on the ground that assessee failed to get any relief under Section 273A of the Act of 1961, therefore, the assessee cannot challenge the order of assessing authority denying benefit under Section 215(4) by preferring appeal. The Kerla High Court held that assessee could have preferred appeal to get relief under Section 215(4) of the Act of 1961 inspite of rejection of his prayer by Income Tax Commissioner under Section 273A.

The Madhya Pradesh High Court in the case delivered in the Commissioner Wealth Tax Vs. Kakatpure Ginning and Pressing Factory reported in (1982) 31 CTR (MP) 287 took the view that scope under two provisions are different. In the aforesaid case, the matter for consideration was under the Wealth Tax Act, 1957, but the provision was almost same as is in the Income Tax Act. The Madhya Pradesh High Court in the case of Bindra & Co. Vs. Commissioner of Income Tax reported in [1987] 165 : ITR 256 observed that provisions of Income Tax Act are similar to those of Wealth Tax Act with reference to waiver of penalty and appeal against an order of penalty. The Madhya Pradesh High Court in above case held that refusal to waive penalty by Commissioner would not

affect right to appeal against the order of penalty thereby the appellate authority could have taken a different view than the view taken by the Commissioner under Section 273A.

Learned counsel for the respondent submitted that the Income Tax Commissioner is highest authority in the hierarchy and he has been given power to reduce and waive the interest by enacting Section 273A (as it was in force before 1st April, 1989) and the Section 273A starts with non-obstante clause making it clear that the Commissioner of Income Tax shall have discretion of reduction or waiver of interest in a case where interest has already been levied and paid or where the interest is payable. In view of the above, the assessing authority could not have taken a different view than the view taken by the Commissioner of Income Tax under Section 273A and, therefore, the decision given by the Income Tax Commissioner under Section 273A was binding upon the assessing authority and he could not have reduced or waived the interest.

I considered the submissions of learned counsel for the parties and perused the facts of the case as well as law laid down by the various High Court.

Section 215 provides, in what circumstances the interest shall be payable by the assessee. The assessing

authority has been given power to pass order levying interest on the due amount and at the same time by sub-section (4) of Section 215 of the Income Tax Act, 1961 the power has been given to the assessing authority to reduce or waive the interest payable by the assessee under Section 215. The conditions have been provided under Rule 40 of the Income Tax Ruels, 1962 and on fulfillment of above conditions by the assessee, the assessee may request for reducing or waivement of interest. These conditions are as under : -

> "*(1) When the relevant assessment is completed more than one year after the submission of the return, the delay in assessment not being attributable to the assessee.*
> *(2) Where a person is under section 163 treated as an agent of another person and is assessed upon the latter's income.*
> *(3) Where the assessee has income from an unregistered firm assessed under the provisions of clause (b) of section 183.*
> *(4) Where the previous year is the financial year or any year ending about the close of the financial year and large profits are made after the 1st March (or the 15h March in case where the proviso to section 211 applies), in circumstance which could not be foreseen.*
> *(5) Any case in which the Deputy Commissioner considers that the circumstances are such that a reeducation or waiver of the interest payable under section 215 or section 217 is justified.*
> *(6) Nothing contained in this rule shall apply in respect of any assessment for the assessment year commencing on the first day of April, 1989, or any subsequent assessment year."*

The assessing authority can, if a case is made out for

reducing or waiving the interest payable by the assessee then he may pass appropriate order. That is the jurisdiction conferred upon the assessing authority by the statute and requirement of statute is that there must be decision by the assessing authority itself on the request of assessee made for reducing the interest or waivement of interest completely. The order passed by the assessing authority as a whole including to finding under Section 215(4) is an appealable order.

The power of the Commissioner Income Tax under Section 273A provides that notwithstanding anything contained in the Act of 1961 the Chief Commissioner or Commissioner may, in his direction, whether on his own motion or otherwise reduce or waive the amount of interest or payable under various sections including under Section 215 of the Act of 1961. Before passing order of waivement of interest or even for reducing the interest payable by the assessee, the Income Tax Commissioner is required to satisfy itself that prior to the detection by the Assessing Officer, of the concealment of particulars of income or of the inaccuracy of particulars furnished in respect of such income, voluntarily and in good faith, made full and true disclosure of such particulars and also has cooperated in any inquiry relating to

the assessment of his income and has either paid or made satisfactory arrangements for the payment of any tax or interest payable in consequence of an order passed under the Act of 1961 in respect of the relevant assessment year. There are further conditions prescribed which may guide the Commissioner of Income Tax in the matter of taking a decision for reducing or exonerating the assessee from payment of interest payable by him.

In view of the different scope it is clear that the power of the assessing authority under Section 215(4) are not taken away by enacting Section 273A in the Act of 1961, and in view of the proposition of law laid down by the various judgment referred above, the assessing authority in this case has committed error of law by not exercising jurisdiction under sub-section (4) of Section 215 of the Act of 1961 by dismissing the petitioner's application for waivement of interest under Section 215(4) of the Act of 1961 by the impugned order dated 28th Dec., 1995 (Annex.11) merely on the ground that matter was considered by the Commissioner of Income Tax, Jodhpur under Section 273.

In view of the above reasons, the writ petition is allowed, the order dated 28th Dec, 1995 (Annex.11) is quashed and set aside and the matter is remanded back to

the assessing authority – Asstt. Commissioner of Income Tax, Sri Ganganagar for deciding the same in accordance with the application of the petitioner filed under Section 215(4) of the Act of 1961 for the assessment year 1987-88.

(PRAKASH TATIA), J.

c.p.goyal/-